

The Examiner rejected Claim 5 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicant regards as the invention. The Examiner indicated that Kevlar is a trademark and is subject to change. Accordingly, the claim has been amended to now recite p-aramid fibers with basis for this amendment being found on Page 15, lines 24-25 of the subject patent application. Accordingly, it is believed that this rejection is overcome.

The Examiner rejected claims 1-8, 11, 12, 20, 21, and 23 under 35 U.S.C. §103(a) as being unpatentable over the Booher patent (U.S. Patent No. 5,156,787) in view of the Miyamoto et al. patent (U.S. Patent No. 6,001,440). The Examiner indicates that the Booher patent discloses a clutch pad that comprises a functionally graded material. The Examiner notes that the Booher patent fails to teach that the heat conducting elements are situated within the functionally graded material with a varying concentration. The Examiner then looks to the Miyamoto et al. patent as teaching that feature.

The Applicant respectfully traverses this rejection for the reasons stated in the Preliminary Amendment filed on January 10, 2003. The Applicant respectfully submits that the Miyamoto et al. patent teaches of using a heat conductive powder for a thin film material used in electrophotographic copying machines. The Booher patent relates to a friction material used, for example, in a clutch pad. Given the diverse natures of the two subjects disclosed by the references, the Applicant respectfully submits that it is immediately apparent that the Examiner has improperly employed the claimed invention as a template to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention. As the Examiner well knows, this is impermissible hindsight reconstruction. It is well settled law that one cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention, In re Fine, 5 USPQ 2d 1596 (Fed. Cir. 1988). There is no mention of a clutch material or a friction material in the Miyamoto et al. patent. Miyamoto et al. relates only to a thin film material. The other patents that do relate to friction material, the Booher patent and the Shibata et al. patent (U.S. Patent No. 5,004,497), both fail to teach of a selected orientation and spatial distribution as in the claimed invention. Both the Booher and Shibata et al. patent both teach of a uniform distribution which is contrary to the instant invention.


The Examiner further rejected Claims 13-15, and 22 under 35 U.S.C. §103(a) as being unpatentable over the Booher patent in view of Miyamoto et al. as applied above and further in view of the Nakamoto et al. patent (U.S. Patent No. 6,098,612).

The Applicant respectfully submits that the Examiner's reference to this patent which relates to a heating garment is merely further support of the Applicant's position that the Examiner is using the claimed invention as a template to pick and choose among isolated disclosures in the prior art. Heating garments have a purpose that is totally different from that of a clutch facing material and this patent is not analogous art.

For the above reasons, as well as those presented in the Preliminary Amendment submitted on January 10, 2003, the Applicant respectfully traverse this rejection.

In view of the above, the Applicant respectfully submits that the claims are in condition for allowance. Reconsideration of the rejections are requested. Allowance of the claims and an early date is solicited.

Respectfully submitted,

  
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MARKED UP VERSION OF ALL AMENDED CLAIMS

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TC 3

5. A friction material as set forth in claim 4, wherein said aramid fibers comprise [Kevlar] p-aramid fibers.